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HEADLINE: Where There's Smoke in the Office, There's Fire

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The growing friction between smokers in the office and their non-smoking colleagues is putting the heat on managers. A few local businesses, such as C&P Telephone Co. and District law firm Dewey, Ballantine, Bushby, Palmer & Wood, have settled the issue by establishing partial or total smoking bans. About one-third of the nation's companies have adopted some kind of smoking policy, and the controversy over whether smokers should be permitted to indulge the habit at work has reached the point where many managers who would prefer to ignore the issue no longer can.

The silent majority of non-smokers is no longer silent, says A. G. Bickelman, a physician with C&P who helped draft that company's policy. "In the past, those people did not want to be troublemakers. But they're now more vocal," he says. "They're saying, 'I do mind.'" Part of the non-smokers' putspokeness stems from the concern that their smoking colleagues may be polluting the air they breathe eight hours a day, five days a week.

"I'm not concerned with your right to smoke in a situation where I must be present, and I'm not going to compromise on this one," says NBC White House correspondent Sam Donaldson, an ex-smoker who has pledged to clear the smoke from the White House press room."

"The smell of smoke doesn't mean disease, but that's the fear we have to allay," Bickelman says. In his opinion, "the danger (in breathing smoke-filled air) seems meager to the larger group of healthy non-smokers."

The courts have so far extinguished non-smokers' claims that they are constitutionally entitled to a smoke-free environment. But that could change tomorrow, says Maury Baskin, an attorney with Washington-based Venable, Baetjer, Howard & Civiletti. Ten years ago in New Jersey, a court ruled for the first time that an employer was obliged under common law to provide a work place free from unsafe conditions. The court, however, acknowledged that "the rights and interests of smoking and non-smoking employees alike must be considered." Although that decision, which entitles employees to clean air through common law, has not been affirmed by other courts, it hasn't been struck down by a higher court either.

The legalities of the issue haven't yet been defined, Baskin says. Smokers as well as non-smokers have filed suits against employers on all sorts of

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grounds, including handicapped discrimination, and the legal process hasn't yet weeded out the invalid claims. "I would advise caution on both fronts," Baskin says. "Either side can come after you."

Washington, Maryland and Virginia all have legislation that forbids discrimination against the handicapped. Non-smokers who are truly allergic to smoke in the air may file a handicapped discrimination charge against their employers. Smokers who claim in turn that they are handicapped by the addiction and need to smoke where they work, are less likely to win the suit, Baskin says.

In response to apparent judicial reluctance to delineate smokers' as well as non-smokers' rights, eight states and a number of municipalities have passed legislation limiting where people can smoke. Of all the local jurisdictions, however, only Montgomery County has enacted a law that bans smoking in county government work places, outside specifically designated smoking areas. The law takes effect in April. In an earlier debate, the county council rejected private work place smoking restrictions.

Employers attempting to set up their own guidelines not only lack local government direction, they are further hindered by conflicting statistics. Employees who smoke cost their businesses an extra \$ 4,500 a year in lost time, higher insurance premiums and lower productivity, says William Weis, a Seattle-based consultant affiliated with the Albers School of Business. Another study, however, bears out the common stereotype of the hard-driving, chain-smoking workaholic. According to a report by UCLA professor and consultant Lewis Solmon, absenteeism among smokers is lowest among the heaviest smokers.

Even the medical data, which would appear more clear-cut, leads different researchers to different conclusions. The fury over passive smoking, or inhaling smoke-filled air, was fanned by a highly publicized 1981 Japanese study, which concluded non-smoking wives of smokers are more likely to develop cancer than non-smoking wives of non-smokers. But a 1983 study conducted by the National Heart, Lung and Blood Institute in Washington found "the effect of passive smoking on the respiratory system varies from negligible to quite small."

C&P's Bickelman says a small percentage of people are allergic to smoke, and those people can get very sick if they are exposed to smoky air. Others who work near smokers may suffer aggravation of underlying heart and lung ailments, and companies should put all these people in a smoke-free environment. The courts have consistently upheld this small group's claim to need a protected atmosphere, and they have required employers to provide "reasonable accommodation."

At C&P, smoking is no longer permitted in cafeterias, waiting rooms, lobbies and hallways, small common areas, such as bathrooms and copying rooms, and those conference and classrooms that aren't large enough to be divided into smoking and non-smoking sections. The policy, which went into effect last month, allows smoking in the fully enclosed offices of workers who permit it, and in work spaces and common areas where employees have agreed to allow smoking.

Three years ago in Pennsylvania, a court ruled that an employer could not impose smoking restrictions if a collective bargaining agreement is in place. The C&P management notified the union, the Communications Workers of America,

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in advance of its decision to limit smoking in C&P facilities. The company is also setting up free lunch time smoking cessation classes for those employees who want to kick the habit.

A number of local high technology firms have always had smoking bans because something about smoke seems to hamper computer functions. Smoking has never been allowed inside the building at Verdix Corp. in Chantilly, says spokeswoman Virginia Dart. "We may decide at some point to designate a smoking area, but for now, people just go outside and smoke." Similarly, smoking is not permitted at Satellite Systems Engineering in Bethesda.

The former secretary of Health, Education and Welfare, Joseph Califano, now managing partner at Dewey, Ballantine, doesn't permit any smoking in the law offices. Currently, there is one designated room where the staff can smoke, but in October a full ban goes into effect and the lawyers and staff who want to smoke will have to go outside.

Smokers and their lawyers say such policies smack of hiring discrimination, but a couple of recent court cases have struck down charges that companies that don't hire smokers discriminate. Smokers are not a protected class or group, says consultant Robert Rosner, with Seattle-based Rosner, Weis & Lowenberg Inc., who flew in from Seattle to attend a seminar on smoking at the work place sponsored by the Greater Washington Board of Trade. "For that matter, a company could choose not to hire non-smokers and it would be perfectly legal."

The most recent census figures show that 30 percent of American adults smoke now compared to more than 40 percent in 1965. But the numbers don't tell half the story. The people who smoke then are not the same people who smoke now. In 1965, cigarettes were a glamorous habit; today, smoking is associated with less income and less education. Surveys show the perception of the habit has deteriorated, even among smokers. "Can you imagine seeing a photo in an annual report of a CEO with a cigarette in his hand?" Rosner asks.

"I don't think it will even be an issue in 20 years," Bickelman says. "I think tobacco will be off the market."

GRAPHIC: Drawing

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